



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

MAY 26 2004

400 Seventh St., S.W.  
Washington, D.C. 20590

Mr. Michael B. Kay  
Ocenco Incorporated  
LakeView Corporate Park  
10225 82<sup>nd</sup> Avenue  
Pleasant Prairie, WI 53158-5801

Ref. No. 04-0042

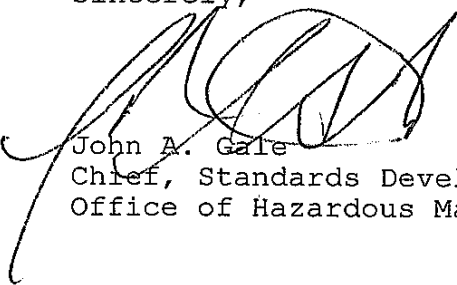
Dear Mr. Kay:

This is in response to your February 26, 2004, letter regarding the applicability the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to a used breathing apparatus. Based on the information provided, each apparatus contains a cylinder of compressed oxygen and a scrubber with lithium hydroxide. Once used, the pressure of the oxygen is less than 40 psia and the scrubber is filled with non-hazardous material. Specifically, you ask if your package containing the described used breathing apparatus would be considered empty as specified in § 173.29(b) and therefore not subject to the HMR.

The answer is yes: Your package of a used breathing apparatus containing non-pressurized oxygen and a non-hazardous material would be considered empty as specified in § 173.29(b). Therefore, it is not subject to the HMR.

I hope this satisfies your request.

Sincerely,



John A. Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards



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LakeView Corporate Park  
10225 82nd Avenue  
Pleasant Prairie, WI U.S.A.  
53158-5801

February 26, 2004

Mr. Edward T. Mazzullo  
Director, Office of Hazardous Materials Standards  
U.S. DOT/RSPA (DHM-10)  
400 7th Street S.W.  
Washington, D.C. 20590-0001

Phone: (262) 947-9000  
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BAH  
3173.29  
Empty Packagings  
04-0042

Dear Mr. Mazullo,

Ocenco Incorporated requests DOT interpretation of 49CFR, 173.29 (b) in regards to transporting used breathing apparatus as non-hazardous material.

We manufacture an emergency escape breathing apparatus containing a cylinder of compressed oxygen and a lithium hydroxide scrubber, and ship the apparatus as a Class 9, Lifesaving Appliance, not self-inflating, UN3072. This breathing apparatus is used predominately onboard naval and commercial vessels.

The apparatus are routinely used by our customers for training exercises and then returned to Ocenco for refurbishment; the apparatus cannot be cleaned and refilled by the user. Once the apparatus is used, the oxygen cylinder pressure is reduced to zero and the lithium hydroxide granules have been converted to lithium carbonate by the users exhaled breath. Residual lithium hydroxide is contained inside a shell of lithium carbonate.

It is our position that the used breathing apparatus meet the conditions of section 173.29 (b) (iii) in that the packaging (the scrubber) is refilled with non-hazardous lithium carbonate to the extent that the remaining lithium hydroxide no longer poses a hazard, and therefore is not subject to the Hazardous Materials Regulations. This position is supported by the construction of the packaging that further mitigates potential hazards. The scrubbing material is secured in a metal container that cannot be opened without destroying the apparatus. The metal container is sealed in a ploy bag and packed in a fiberboard inner and outer box.

Please let me know if your office agrees with our position that these used apparatus are not subject to the HMR. I thank you for your time in this matter, and please contact me if you have any questions.

Sincerely,

Michael B. Kay  
Engineering Manager  
mikekay@ocenco.com